

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Sean McNerthney,

Case No. 21-CV-2028 (ECT/ECW)

Petitioner,

v.

REPORT AND RECOMMENDATION

Ramsey County,

Respondent.

In an order dated September 21, 2021, this Court noted that the petition for a writ of habeas corpus filed by petitioner Sean McNerthney appeared to be moot, as the state-court proceedings and detention challenging in the habeas petition ended shortly after the petition was filed. *See* Dkt. No. 6. McNerthney was given until October 12, 2021, to show cause why this matter should not be dismissed due to mootness, failing which it would be recommended that this action be dismissed without prejudice both for mootness and for failure to prosecute. *See id.* (citing Fed. R. Civ. P. 41(b)).

That deadline has now passed, and McNerthney has not responded to this Court's order to show cause. In fact, McNerthney has not communicated with the Court about this case at all since commencing this action. By all indications, McNerthney no longer has any interest in prosecuting this matter, most likely because there is no longer any live issue in dispute for the Court to adjudicate. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice, both due to mootness and under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance*

Grand Hotel, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY RECOMMENDED THAT

1. This action be DISMISSED WITHOUT PREJUDICE.
2. The application to proceed *in forma pauperis* of petitioner Sean McNerthney [Dkt. No. 3] be DENIED AS MOOT.

Dated: October 20, 2021

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).